

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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JAN 25 1999

In the Matter of)

Federal-State Joint Board on Universal)
Service)

CC Docket No. 96-45

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

**REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC. AND
U S WEST WIRELESS, INC. TO
FURTHER NOTICE OF PROPOSED RULEMAKING**

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January 25, 1999

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SUMMARY

U S WEST Communications, Inc. and U S WEST Wireless, Inc. (collectively “U S WEST”) replies to comments to the Commission’s FNPRM regarding wireless providers and cable operators in the Universal Service docket. U S WEST supports those who advocate the use of interstate and intrastate retail revenues as the funding base for federal high cost and low income mechanisms. U S WEST joins others in their objection to splitting universal service contributions by the jurisdictionality of the revenues reported and suggests that such an idea be abandoned. Should the Commission continue this approach, U S WEST supports allowing carriers the option of electing the safe harbor percentage or reporting their own lower percentage.

U S WEST supports the safe harbor concept but suggests the Commission’s 15% figure is too high and suggests a lower percentage be adopted.

U S WEST contends that the mandate of Section 254(b)(1) of the Act must be considered and wireless providers who seek ETC designation must be required to offer, at minimum, a package of affordable basic local exchange services which are available separate from all their other telecommunications and non-telecommunications services.

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U S WEST WIRELESS, INC. TO
FURTHER NOTICE OF PROPOSED RULEMAKING**

U S WEST Communications, Inc. and U S WEST Wireless, Inc. (collectively "U S WEST") hereby submit reply comments in response to initial comments filed in the Federal Communications Commission's ("Commission") Further Notice of Proposed Rulemaking regarding wireless providers and cable operators in this docket.¹

**I. THE TOTAL INTERSTATE AND INTRASTATE RETAIL REVENUES
SHOULD BE USED FOR DETERMINING UNIVERSAL SERVICE
CONTRIBUTIONS**

U S WEST has consistently supported, as do many commenters in this proceeding,² the use of interstate and intrastate retail revenues as the funding base for federal high cost and low income mechanisms. Assessment on a combined retail base would be consistent with the funding base for school, libraries and rural health care. The Joint Board in its Second Recommended Decision has also recommended

¹ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, FCC 98-278, rel. Oct. 26, 1998 ("FNPRM").

the combined funding base for purposes of assessing contributions to the high cost fund.³ In addition to a myriad of benefits, assessing contributions on a combined basis eliminates the need for the Commission to determine a permanent allocation mechanism for wireless and other providers who cannot easily discern interstate and intrastate revenues.

In fact, the FNPRM and many of the comments really illustrate that efforts to assign universal service contributions based on jurisdictional allocations are all artificial and ultimately will end-up costing carriers (and therefore the public) considerably more than any solution will be worth. The Commission is looking for a fair and reasonable way to set the amount of an interstate carrier's contribution to the universal service fund. In this context, there is nothing magical about the percentage of a wireless carrier's traffic which may be classified as interstate. The complexity of the some of the issues identified by the Commission in the FNPRM (e.g., how to treat a wireless communication which began as intrastate but, because the customer has been in transit during the call, became interstate at some indeterminate moment during the course of the call itself) highlights potential disproportionality between costs and benefit of basing universal service fund

² See, e.g., BellSouth Corporation ("BellSouth") at 3; GTE Service Corporation ("GTE") at 2; AT&T Corp. ("AT&T") at 1; National Telephone Cooperative Association ("NTCA") at 2.

³ In the Matter of Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Second Recommended Decision, FCC 98J-7, rel. Nov. 25, 1998.

allocation on jurisdictional measurement.⁴ The exercise itself seems pointless when a total retail revenues alternative is so readily available.

U S WEST agrees with GTE's comments:

Basing contributions on total retail revenue will provide the largest possible funding base, and hence the lowest, and least distorting, contribution rate. It would eliminate the burden of separating carriers' revenues between jurisdictions for universal service purposes. And it would eliminate any incentive to misreport the proportion of a carrier's revenues that are interstate. The Commission has already determined that it has the authority to use a base of combined state and interstate revenues. In its Second Recommended Decision, the Joint Board once again, citing the same reasons given here, endorsed the use of combined retail revenues as the funding base for all carriers' contributions to the federal mechanism.⁵

Other commentators reach essentially the same conclusion.⁶ The effort to split universal service contributions by the jurisdictionality of the revenues reported is a bad idea and should be abandoned.

However, should the Commission continue, even temporarily, to take the jurisdictional approach to universal service contributions, the proposal to allow carriers the choice to either measure the jurisdictional nature of their reported traffic or to accept a Commission-prescribed "safe harbor" assigning a specified percentage of traffic to the interstate jurisdiction makes sense. Carriers should be given the option to measure their interstate traffic for jurisdictional reporting purposes if they find it cost-effective to do so, but should not be required to do so. It would seem rudimentary that any structure for jurisdictionally allocating universal

⁴ FNPRM ¶ 29.

⁵ GTE at 4-5 (footnotes omitted).

⁶ See, e.g., AT&T at 1-2; BellSouth at 3.

service contributions ought to focus on: a) avoiding interstate/intrastate reporting which amounts to more than or less than one of a carrier's eligible revenues; b) avoiding a structure which imposes costs on carriers and the public disproportionate to the benefits conferred; c) satisfies the non-discrimination requirements established by the Act and this Commission; and d) is not manipulatable to an unwarranted competitive advantage. The choice proposed by the FNPRM would seem most consistent with these precepts.

Several brief comments on various aspects of the Commission's safe harbor and measurement proposals are in order.

a. Safe Harbor Percentage

The FNPRM proposes to establish a safe harbor percentage of 15%, the number which would be the percentage of revenues assigned to the interstate universal service pool in the absence of measurements by the carrier.⁷ While supporting the safe harbor concept, U S WEST found that the 15% figure was too high. Several commentators have submitted information on the record consistent with U S WEST's position.

- CTIA supports a safe harbor percentage of 5% to 6%.⁸
- GTE, relying on its own traffic studies (4% to 8%) and the industry average reported Telecommunications Revenue Report (approximately 7.7%), supports a number of 8%.⁹
- Bell Atlantic, using a calculation methodology similar to GTE's, supports a 7.7%

⁷ FNPRM ¶ 23.

⁸ Cellular Telecommunications Industry Association ("CTIA") at 7-8.

⁹ GTE at 7-8.

figure.¹⁰

A safe harbor figure lower than 15% would be eminently more reasonable.

b. Allocation Methodology

Sprint PCS observes that the benefits and objectives of a prescribed safe harbor percentage would be rendered nugatory if states could establish a methodology inconsistent with the jurisdictional assignment prescribed by the Commission. For example, if the Commission decides 8% of wireless retail revenues are interstate, then the state commission could not find that 95% of a wireless carrier's retail revenues are intrastate -- a finding which reaches a total allocation percentage in excess of 100%. We do not suggest here that the Commission should attempt to dictate to a state how to administer its universal service program. But it is important that any structure which is predicated on division of property and revenues between jurisdictions be based on a system which does not result in allocation of more property or revenue than a carrier actually has.

c. Waiver

The FNPRM proposes that a carrier may utilize either the safe harbor option or the measurement option, and that either course of action will be viewed as consistent with the Commission's rules.¹¹ Nextel proposes that carriers be required to secure a waiver from the Commission in order to opt-out of the safe harbor structure.¹² Nextel's suggestion should be rejected. The waiver process is not

¹⁰ Bell Atlantic at 3-4.

¹¹ FNPRM ¶ 25.

¹² Nextel Communications, Inc. ("Nextel") at 7.

appropriate for routine administration of the Commission's rules or policies. As both the safe harbor and the measurement structures are reasonable responses to the jurisdictional allocation issue (assuming that the Commission holds fast to the idea that jurisdictional allocation is reasonable in the first place), requiring one or the other approach to be implemented through waivers would simply waste time and resources of both carriers and the Commission.

d. Traffic Studies

In its initial comments, U S WEST noted that carriers utilizing measurement to allocate revenues for universal services purposes could choose to rely on traffic studies, but should not be required to do so.¹³ Most commentators agree with this position, pointing out that it would be neither simple nor necessarily accurate for wireless carriers to conduct traffic studies.¹⁴ Ameritech, on the other hand, suggests that carriers should be required to file company-specific percentages determined by periodic traffic studies for the determination of the jurisdictional nature of calls.¹⁵ Ameritech's proposal would not meet the analytical test that the rules actually adopted by the Commission not cost more than they are worth. Each carrier should be permitted to use a percentage methodology that best meets its own needs for determining the jurisdiction of a call, i.e., the method which best suits the carrier's network and billing systems. Traffic studies of wireless traffic would not be a reasonable method of proceeding for many wireless carriers, and should not be

¹³ U S WEST Comments at 4.

¹⁴ See, e.g., Sprint PCS at 3-4; Nextel at 9.

¹⁵ Ameritech at 2-3.

required.

e. Simplifying Assumptions

Several brief comments are appropriate concerning the simplifying assumptions contained in the FNPRM.

- Major Trading Area (“MTA”) measurement. While a broad spectrum of commentors oppose the use of MTAs as a jurisdictional surrogate for interstate/intrastate analysis,¹⁶ several commentors support MTA analysis.¹⁷ The problem with using MTAs as a surrogate for jurisdictional analysis is that the Commission could just as well pick a number out of a hat with as great a chance of accuracy in assessing jurisdictional allocations. There is simply no reason to believe that inter-MTA traffic will even remotely replicate interstate traffic. The Commission should abandon the concept of using MTA analysis as a surrogate for interstate analysis.
- Originating point of call. U S WEST pointed out that measurement of originating calls should be based on the location of the originating switch.¹⁸ U S WEST’s vendors indicate that it would be considerably easier and more cost effective to extract information from the SS7 network based on where the switch is located rather than information based on where the antenna that first receives the call is located. Antenna information is more embedded in an SS7

¹⁶ See, e.g., Nextel at Summary, 8; AirTouch Communications, Inc. at 6-8; Ameritech at 3; SBC Communications Inc. at 5-6.

¹⁷ See, e.g., Comcast Cellular Communications, Inc. (“Comcast”) at 27; CTIA at 10-11.

¹⁸ U S WEST Comments at 5.

message. U S WEST agrees with AirTouch's observation -- that use of the switch as the originating point is an equitable and logical option for wireless carriers because the switch location is generally more readily determinable than the originating antenna site.¹⁹ CTIA's contrary contention²⁰ is not supported and is not accurate.

- Roaming. U S WEST contended in its initial comments that the interstate roaming percentage should be the same percentage used by the carrier for other calls.²¹ Other methods would add much more to cost than they would to accuracy. CTIA's support of this position is accurate and worth noting.²²

II. UNIVERSAL SERVICE SUPPORT MUST BE USED ONLY FOR UNIVERSAL SERVICE PURPOSES

In U S WEST's initial comments, a variety of practical suggestions were made as to how the Commission can ensure that universal service fund disbursements are utilized by receiving carriers for the purpose for which they were intended -- the bringing of affordable essential telephone services to Americans who could otherwise not afford such service.²³ The necessity of such rules is obvious -- the Act itself specifically requires that universal service funds be utilized only for the universal service purposes for which they were intended.²⁴ The proposed

¹⁹ AirTouch at 5-6.

²⁰ CTIA at 11.

²¹ U S WEST Comments at 6.

²² CTIA at 11-12.

²³ U S WEST Comments at 11-19.

²⁴ 47 U.S.C. § 254(e).

U S WEST approach would ensure that wireless and cable television providers seeking universal service funds from the government use these funds properly and lawfully. The Commission in the FNPRM limited its discussion of this issue to the basic requirement that wireless carriers seeking universal service funds to the provision of local service at reasonable rates by the wireless carrier -- clearly a proper starting point, but one which does not encompass all of the critical issues which must be addressed.

On the other hand, Western Wireless essentially contends that "the Commission should make it clear that the only relevant criteria for states to consider in deciding whether to designate a carrier as an ETC [eligible telecommunications carrier] are the criteria listed in Section 214(e)."²⁵ Such an approach would essentially transform the universal service provisions of the Act into a carrier subsidy scheme, basically ignoring the mandate of Section 254(b)(1) -- that universal service funding be used only for the statutorily-directed purposes. Universal service funding is not meant to be used for any purpose other than universal service, and the Commission would be remiss if it chose to ignore the universal service precepts outlined in U S WEST's original comments.

In this regard, Western Wireless has also asserted a cost model purporting to demonstrate that Western Wireless can provide less costly service in high cost areas than can a wireline provider, and that wireline universal service support should be

²⁵ Western Wireless Corporation ("Western Wireless") at 18.

based on the wireless cost model submitted by Western Wireless.²⁶ As a basic proposition, U S WEST certainly agrees that, should Western itself be able to actually serve the people to whom its hypothetical model appears to address, Western should do so, subject to whatever universal service support is appropriate. If the Commission (or a state Commission) is going to rely on a wireline carrier as a carrier of last resort, it must afford that carrier reimbursement based on its own cost characteristics (or, at the very least, the cost characteristics inherent in the technology of the carrier itself), not the cost characteristics of a hypothetical wireless carrier which has chosen not to provide service to the area in question. Fundamentally, the Commission should utilize the costs of a wireless provider in evaluating universal service support payments only when a wireless provider has actually made itself available as an eligible telecommunications provider in the area.

As noted in U S WEST's initial comments, wireless providers who seek designation as an eligible telecommunications carrier must be required to offer, at minimum, a package of affordable basic local exchange services which are available separate from all of their other telecommunications and non-telecommunications services.²⁷ Wireless carriers, of course, are fully free to market their services in any lawful manner, and we do not suggest that this Commission should enter the business of attempting to regulate them. However, when it comes to receiving universal service fund payments, the law is very clear -- wireless carriers desiring

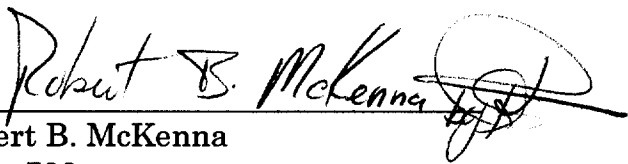
²⁶ Id. at 13-15.

to receive such payments must offer basic, high-quality universal service on a generally available, affordable basis as an absolute prerequisite to being eligible to receive such payments. The Commission must reaffirm this basic precept.

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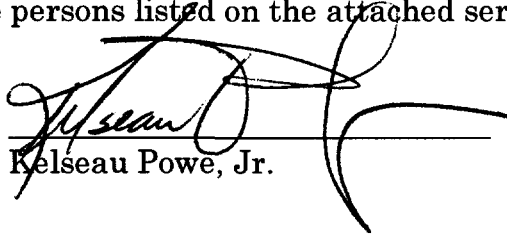
Of Counsel,
Dan L. Poole

January 25, 1999

²⁷ U S WEST Comments at Section II.

CERTIFICATE OF SERVICE

I, Kelseau Powe, Jr., do hereby certify that on this 25th day of January, 1999, I have caused a copy of the foregoing **REPLY COMMENTS OF U S WEST COMMUNICATIONS, INC. AND U S WEST WIRELESS, INC. TO FURTHER NOTICE OF PROPOSED RULEMAKING** to be served, via first class United States mail, postage prepaid, upon the persons listed on the attached service list.



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